No. 86-195

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC., ET AL.,
Petitioners,

versus

AMALIA KASSAPAS, ET AL.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
FOR THE STATE OF LOUISIANA

BRIEF OF INTERNATIONAL SHIPPING FEDERATION AND INTERNATIONAL CHAMBER OF SHIPPING, AS AMICI CURIAE

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986
No. 86-195

ARKON SHIPPING AGENCY, INC.
KONKAR SHIPPING AGENCIES, S.A.
AND KONKAR RESOLUTE CORPORATION
Petitioners

versus

AMALIA KASSAPAS, individually and as personal representative of the estate of Georgios Kassapas, and as tutrix of the estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually and as personal representative of the estate of ANDREAS LAMBOU; VASILIKI LAMBOU; SOFIA LAMBOU; and VASILIKI LAMBOU
Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OF AMICI CURIAE, INTERNATIONAL SHIPPING FEDERATION AND INTERNATIONAL CHAMBER OF SHIPPING

The International Shipping Federation (hereinafter "ISF") and the International Chamber of Shipping (hereinafter "ICS") file this brief as amici curiae with the consent of the parties.[1]

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1 Letters expressing such consent are on file with the Clerk of Court.

I.

Interest of the International Shipping Federation and the International Chamber of Shipping As Amici Curiae

ISF is an international organization, consisting of representatives from twenty-eight nations, including the United States, vitally interested in international maritime affairs, particularly as such affairs relate to shipowners and seamen.

ICS is an organization of national shipowners' associations with representatives from thirty-three nations, vitally interested in the development of maritime statutory and jurisprudential law.

ISF and ICS have participated in this case as amici curiae before the Louisiana Supreme Court and before the Louisiana Court of Appeal, Fifth Circuit.

Participation by ISF and ICS as amici curiae will assist the Court, as ISF and ICS, international shipping organizations, present the views of their members in matters of importance to the international shipping community.

Presented in this case is the important question whether a state court, hearing an admiralty and maritime case, is required to apply the choice of law factors, set forth by this Court in *Lauritzen v. Larsen*, 345 U.S. 571 (1953), and *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306 (1970), together with the doctrine of *forum non conveniens* as developed by the maritime law, in determining whether to maintain jurisdiction over a maritime action involving foreign parties. This question is of international importance, affecting the rights and liabilities of shipowners world-wide. The ruling of the Louisiana courts below, refusing to apply the

maritime doctrine of *forum non conveniens*, destroys uniformity in the maritime law and leaves shipowners subject to the unfairness of trial in the United States, often under United States law, as to causes of action having no relationship to the United States, thereby provoking international conflict.

IFS and ICF adhere to the position set forth by Petitioners, but set forth the following additional considerations in support of the petition for writ of certiorari.

II.

Factual and Procedural Background

Decedents, two Greek seamen, served aboard the Greek flag M/V KONKAR RESOLUTE. The accident giving rise to their deaths occurred while the vessel was in the Port of Leningrad, U.S.S.R. The vessel is owned by a Liberian corporation having its principal place of business in Greece; all of the shipowning corporation's officers and directors are Greek citizens who reside in Greece or Saudi Arabia. No United States citizen or resident is a shareholder, officer, or director of the shipowning company. The M/V KONKAR RESOLUTE is managed by a Panamanian corporation which maintains its principal office in Greece. None of the officers, directors, or shareholders of the managing corporation are United States citizens or residents. The vessel has a limited-purpose agent in the United States, which assists in arranging bunkers and in some charter negotiations; however, this New York agent has no authority to bind the owners to charters without specific approval of the vessel owner; it has no ownership interests in the vessel.

This case, in and of itself, involves a direct conflict between the rulings of a state and a federal court, justify-

ing the issuance of a writ of certiorari. Plaintiffs, citizens and residents of Greece (as were the decedents), filed suit in the United States District Court for the Southern District of New York. That court dismissed plaintiffs' claims under the maritime doctrine of *forum non conveniens. Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 82-6954 (S.D.N.Y. 1984); Petitioners' Appendix at 14a. The United States Court of Appeals for the Second Circuit affirmed. *Amalia Kassapas v. Arkon Shipping Agency*, No. 84-7196 (2d Cir. 1984); Petitioners' Appendix at 19a.

Before the Second Circuit had decided the appeal, plaintiffs' filed suit in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

The state district court, following the lead of the federal courts, ordered dismissal for *forum non conveniens. Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No 293-195 (La. 24th J.D.C. 1985); Petitioners' Appendix at 11a. However, the Louisiana Court of Appeal, Fifth Circuit, reversed. Despite the extensive argument presented to that court by Petitioners and amici curiae concerning the applicability of the maritime doctrine of *forum non conveniens*, the Louisiana Fifth Circuit did not discuss the doctrine; rather, it held the state district court in error because the Louisiana Code of Civil Procedure did not recognize the doctrine. *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, 485 So.2d 565 (La. App. 5th Cir. 1985); Petitioners' Appendix at 3a. The Louisiana Supreme Court denied Petitioners' writ application without an opinion by a 4-3 vote. 488 So.2d 403 (La. 1986); see Petitioners' Appendix at 1a.

III.

Summary of Argument

The maritime decisions of this Court have stressed the need for uniformity in decisions, whether a claim is brought in federal or state court. This Court has held on several occasions that the rights and liabilities of parties to a maritime action are governed by the substantive admiralty and maritime law, whether plaintiff files suit in federal or state court. This Court has further stressed that maritime procedural law applies both in federal court and in state court, particularly where the procedure affects the substantive rights of the parties. The decisions of the Louisiana appellate court below, refusing to apply established maritime choice of law and *forum non conveniens* principles to determine whether dismissal would be appropriate, is inconsistent with the uniformity of decision in maritime cases that the jurisprudence of this Court has strived to obtain. This Court should grant a writ of certiorari to resolve the conflict between the decision of the Louisiana appellate court and the jurisprudence of this Court, as resolution of this conflict is important to the uniformity of the maritime law.

At least one federal court has stated specifically that maritime *forum non coveniens* questions are governed by maritime law, whether plaintiff brings his action "in admiralty" or "at law." Consistent with this case, numerous federal cases have held that Jones Act claims, which are essentially cases "at law," are subject to maritime choice of law and *forum non conveniens* principles, whether plaintiff invokes federal admiralty jurisdiction or brings his claim "at law." The decision of the Louisiana appellate court is inconsistent with this established federal jurisprudence; it refuses to apply maritime *forum non conveniens*

principles to a Jones Act claim brought "at law." This Court should grant a writ of certiorari to resolve this conflict between the decision below and established maritime jurisprudence.

Also, this Court should grant a writ of certiorari because the aberration by the Louisiana appellate court from the established maritime choice of law and *forum non conveniens* principles is of the utmost importance to international shipping and commerce. The ruling of the court below, if allowed to stand, will subject shipowners to the individual laws of each state, rather than to one national uniform maritime law, regarding the important questions of choice of law and *forum non conveniens*. Thus state courts, such as the Louisiana appellate court, will be free to ignore maritime *forum non conveniens* law, even though a case (such as this case) may have no rational connection to the United States. Plaintiffs thereby are encouraged to forum shop. Shipowners are required to defend suits, at great expense and inconvenience, and often at the expense of justice, in jurisdictions with no rational relation to the dispute in question. Such a result is inconsistent with the recognition, as a matter of international comity, that other maritime nations with more relation to the dispute are better able to resolve the dispute. Also, international comity is fostered by restricting expansive U.S. doctrines of maritime tort liability to cases in which the United States has some substantial interest. Decisions like the one below strain international relations and encourage the courts of other nations to adjudicate American disputes even when the adjudicating nation has no interest.

The decision below is contrary to uniformity in the maritime law, international comity, and harmony in international commerce. This Court should grant a writ of certiorari to decide the important questions and conflicts

raised by the decision of the Louisiana appellate courts below.

IV.

Argument

A. A Writ of Certiorari Should Be Granted Because the Decision Below Is Inconsistent With Decisions of This Court Requiring Uniformity of Decision in the Maritime Law, Whether Suit Is Filed in Federal or State Court

Numerous decisions of this Court have set forth the principle that admiralty and maritime actions are governed by the same uniform body of law, whether the action is filed in federal court under federal admiralty jurisdiction (28 U.S.C. § 1333), or in federal or state court "at law" as preserved by the "Saving to Suitors" clause.[2] *See, e.g., Offshore Logistics, Inc. v. Tallentire*, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953). This Court's decisions have required federal and state uniformity not only of

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2 28 U.S.C. § 1333 provides in pertinent part:

> **§ 1333. Admiralty, maritime and prize cases.**
>
> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors* in all cases other remedies to which they are otherwise entitled. (emphasis supplied)

substantive maritime law, but also of maritime procedural law where it affects the substantive rights of the parties. *See Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239 (1942), (maritime rule on the burden of proof governing the validity of releases preempted state procedural rule on the subject); *Pope & Talbot, Inc. v. Hawn, supra*, (state procedural rule of contributory negligence was preempted by maritime doctrine of comparative negligence); *Kermarec v. Compagnie Generale Transatlantique, supra*, (maritime law applied in a case brought "at law" pursuant to federal diversity jurisdiction). Thus, in maritime cases, all matters affecting the rights of the parties are governed by maritime law, regardless of the court where the action is filed.

The decision of the Louisiana appellate court is inconsistent with this uniformity. Although sitting in an admiralty and maritime matter, it refused to apply well-established maritime *forum non conveniens* principles to this case.

This case demonstrates the lack of uniformity resulting when a state court refuses to abide by established maritime law. Plaintiffs initially filed their action in federal court in the Southern District of New York. Under established maritime choice of law and *forum non conveniens* principles, the federal court found that Greek law applied and that the case had no contacts with the United States. The case appropriately was dismissed for *forum non conveniens*. The same case then was filed in state court in Louisiana, where the state appellate court reversed the trial court, holding that the case could not be dismissed; it refused to consider application of the maritime *forum non conveniens* principles, finding that the Louisiana Code of Civil Procedure did not recognize the law of *forum non conveniens*. The holding of the Louisiana appellate court, essentially, is that the maritime law of *forum non conveniens* is not binding on state courts hearing an admiralty or mari-

time case. Thus, the state court placed its own state law above established admiralty and maritime law.

The conflict and lack of uniformity promoted by the state court's decision warrant the issuance of a writ of certiorari in this case. Under the decision of the Louisiana court, the question whether a maritime case should be tried in the United States (and, as in this case, whether a state court can dimiss a case), and the related question of what law applies to the case, are subject to varying interpretations of state law in each state jurisdiction, rather than to the uniform body of rules established by this Court and the lower federal courts as an integral part of the admiralty and maritime law.

This Court should grant the writ of certiorari to resolve this important question of maritime law.

B. This Court Should Grant A Writ of Certiorari Because the Louisiana Appellate Court's Decision Is Inconsistent With Federal Decisions Requiring Application of Maritime Choice of Law and *Forum Non Conveniens* Principles, Even to Cases Brought "At Law" Pursuant to the "Saving to Suitors" Clause

At least one federal court explicitly has recognized that where federal maritime law governs plaintiff's maritime action brought "at law" pursuant to the "saving to suitors" clause, the maritime *forum non conveniens* principles, along with maritime substantive law, must be applied by the court sitting "at law." *Ali v. Offshore Co.*, 753 F.2d 1327, 1333 n.14 (5th Cir. 1985). In accordance with *Ali*, Jones

Act cases, which by their very nature are cases "at law,"[3] consistently have been held subject to maritime choice of law and *forum non conveniens* principles. *E.g.*, *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959); *Zouras v. Menelaus Shipping Co.*, 336 F.2d 209 (1st Cir. 1964), (court held that maritime *forum non conveniens* principles apply to Jones Act/general maritime law case, whether suit was brought on the admiralty or law side of the court); *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448 (2d Cir. 1975), (maritime choice of law/*forum non conveniens*

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3 This Court has explained that a Jones Act suit, which may be brought either "in admiralty" or "at law," when brought "in admiralty" introduces common law principles into the admiralty action. *Panama Railroad Co. v. Johnson*, 264 U.S. 375 (1924). The wording of the Jones Act also reveals its character as an action "at law." The Jones Act, 46 U.S.C. § 688, provides in pertinent part:

> **(a) Application of railway employee statutes; jurisdiction**
>
> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages *at law*, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages *at law* with the right of trial by jury and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. (emphasis supplied)

principles equally applicable to Jones Act and general maritime law actions); *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3rd Cir. 1977), *cert. denied sub non, Hapag-Lloyd, A.G. v. Texaco Panama, Inc.*, 423 U.S. 1052 (1976), (maritime choice of law/*forum non conveniens* principles found applicable to Jones Act/general maritime law case); *Vaz Borralho v. Keydril Co.*, 696 F.2d 379 (5th Cir. 1983), (the same choice of law/*forum non conveniens* factors apply to Jones Act claims as to a claims under the general maritime law); *Pereira v. Utah Transport, Inc.*, 764 F.2d 686 (9th Cir. 1985), (maritime choice of law/*forum non conveniens* factors applied to plaintiff's cause of action brought under the Jones Act); *Sigalas v. Lido Maritime, Inc.*, 764 F.2d 686 (11th Cir. 1985), *cert. dismissed*, 106 S.Ct. 1253, 89 L.Ed.2d 362 (1986), (maritime choice of law/*forum non conveniens* principles applied to plaintiff's action, brought under the Jones Act and the general maritime law).

The decision of the Louisiana court clearly is in conflict with this case law. Plaintiffs' choice in bringing their Jones Act/general maritime law claims in state court "at law" is no different than if plaintiffs had brought their claims "at law" in federal court. In either instance, the admiralty and maritime choice of law and *forum non conveniens* principles should apply.

Because the decision of the Louisiana court below is in conflict with established maritime law, this Court should grant a writ of certiorari.

C. A Writ of Certiorari Should Be Granted Because Uniform Application of Principles of Choice of Law and *Forum Non Conveniens* in Maritime Cases Is Important to International Maritime Commerce

Uniform application of choice of law and *forum non conveniens* principles is a matter of utmost importance to maritime commerce and the international maritime community. This Court has recognized that the nature of the shipping business involves ships coming into contact with a multitude of jurisdictions. *Lauritzen v. Larsen*, 345 U.S. at 581, 583. It is not in the interest of this nation to require shipowners to adjudicate causes of action in the United States where the cause of action has nothing to do with this country. Should state and local courts not be required to apply established maritime *forum non conveniens* principles, shipowners trading in the United States will be subject to the unfairness and uncertainty of different state law standards for determining choice of law and the availability of *forum non conveniens* dismissal, thus discouraging maritime commerce with the United States.

A shipowner is entitled to have fairly considered, under a uniform, federally established set of principles what law should be applied to the case and whether the case should be tried in the United States. If the Louisiana decision below is allowed to stand, plaintiffs can avoid the possibility of a foreign law applying, or of having the case dismissed, by simply filing suit in a jurisdiction like Louisiana where the courts would be free to ignore maritime *forum non conveniens* principles. Thus, shipowners are subject to the burden and expense of defending claims in the United States, like those involved in this litigation, which have nothing at all to do with the United States, and which clearly should be dismissed. The result is that shipowners are denied in state court the rights which federal maritime law has established in their favor.

This Court, in *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239 (1942), held that such inconsistencies could not be tolerated:

> If by its practice the state court were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny, federal rights which Congress, by providing alternative remedies, intended to make not less, but more secure. The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates. Not so long ago we sought to achieve this result with respect to enforcement in the federal courts of rights created or governed by state law. And admiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State. So here, in trying this case the state court was bound to proceed in such a manner that all the substantial rights of the parties under controlling federal law would be protected.

Id., 317 U.S. at 245 (footnotes omitted).

The ruling of the Louisiana courts below fosters the injustice that this Court condemned in *Garrett*. Plaintiffs are given license, and, in fact, are invited to forum shop, while defendants are denied the benefit of the *forum non conveniens* principles established by the maritime law to guard against such forum shopping.

International considerations, such as promoting uniformity in the maritime decisional process in state and federal court, and, as a matter of international comity, limiting application of expansive concepts of American personal injury liability to those cases truly having substantial connections with the United States, are adversely affected by the ruling below. Recognition that the individual maritime nations of the world are competent to regulate their own shipping activities is important to international maritime harmony. The decision by the Louisiana appellate court below is inconsistent with that recognition.

Finally, the ruling below invites retaliation by the courts of other nations. This court stated in *Lauritzen v. Larsen*:

> It would not be candid to claim that our courts have arrived at satisfactory standards or apply those that they profess with perfect consistency. But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction.

Id., 345 U.S. at 582.

This Court should grant a writ of certiorari because the Louisiana appellate court and the Louisiana Supreme Court ignored established maritime law designed to promote decision by United States courts of actions having a rational relation to the United States, while discouraging the prosecution of actions in the United States which have no such

rational relation. Refusal to grant a writ in this case, it is submitted, can only promote international disharmony which the maritime case law of this Court has strived to avoid.

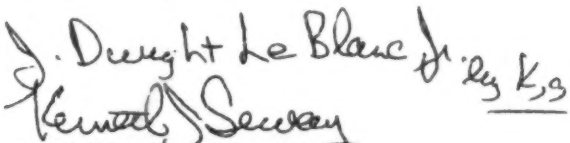
CONCLUSION

Questions of what law should apply to an international maritime dispute, and where the dispute should be resolved are not questions which should be subject to the laws of each individual state of the United States. The question presented by this case has far-reaching importance to international commerce and the uniformity of admiralty and maritime law. This Court and the lower federal courts have labored to establish uniform principles of choice of law and *forum non conveniens* which apply to all cases maritime in nature, whether the case is brought under federal admiralty jurisdiction, federal jurisdiction "at law," or state jurisdiction "at law." The decision by the Louisiana appellate court ignores this uniform law and fosters forum shopping and international discord.

The International Shipping Federation and the International Chamber of Shipping submit that the questions presented by Petitioners' writ application are of the utmost importance to international commerce and the international

shipping community; as amici curiae, they urge the Court to grant a writ of certiorari in this case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned counsel hereby certify that a copy of the above and foregoing Brief on behalf of Amici Curiae, International Shipping Federation and International Chamber of Shipping has been served upon counsel of record for Petitioners, Robert P. McGleskey, Jr., Esquire and Gerard T. Gelpi, Esquire of Gelpi, Sullivan, Carroll & LaBorde, 430 Notre Dame, New Orleans, Louisiana 70130, and upon counsel of record for Respondents, Paul H. Due', Esquire of Due', Anderson & Adams, 5555 Hilton Avenue, 5th Floor, Baton Rouge, Louisiana 70808, by depositing same in the United States mail, first-class postage affixed, on this 5th day of September, 1986.

CHAFFE, MC CALL, PHILLIPS,
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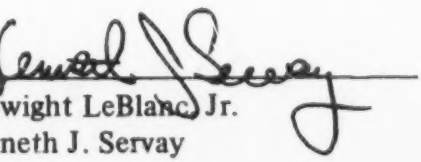
By: 

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